THE

MADRAS LAW JOURNAL.

I] APRIL. [1949

THE DIAMOND JUBILEE OF THE MADRAS ADVOCATES' ASSOCIATION.

The celebration of the Diamond Jubilee of the Madras Advocates' Association is an historic event of which every individual member thereof may be justly proud. That an Association started by twenty four members, sixty years ago, should have grown into such an important and respected body as the present Advocates' Association speaks to the steady and useful work done by the institution all these years. Though the lawyer class has of late, most unjustly, become a much maligned community, its place as an integral part of the administration of justice can never be denied and it is upto the members of the Bar to win back to themselves by their conduct and rectitude the respect and admiration which they once commanded. The Association has always striven to maintain the high traditions of the Bar and by its collective moral opinion has created in our Province a very high standard of professional conduct. The members of the Bar would do well to keep in mind the words of The Hon'ble Sir Harilal J. Kania, the Chief Justice of India in his presidential address to them that the highest standard of professional conduct consisted in following three cardinal principles *i.e.*, "(1) Be true to yourself, (2) Be true to your client, (3) Be true to the Court."

The Association has been a place where Advocates, young and old, senior and junior alike have always met and discussed a variety of topics, much to their mutual advantage. It has to some extent helped to create a sense of camaraderie, though one would wish it had become developed much more than is evident at present. The extremely cordial relationship that exists in Madras between the Bench and the Bar is in no small measure due to the fact that most of the judges have been members of the Association and have moved freely with their comrades at the Bar and even after their elevation to the Bench continue to feel that they are still one with the Bar.

The splendid library which has been built up over the course of these sixty years, though not fully utilised, is available to the ardent and studious seeker after knowledge.

Though the Association as a body has been considering and giving its opinions in regard to some of the proposed legislative measures, it would be very much better if this is done more systematically and thoroughly so as to compel consideration and attention being paid to the opinion of those who are the mos

competent to have a say on the subject. In this connection one cannot emphasise too much the excellent suggestion made by our Chief Justice in his address inaugurating the celebrations that some of the members of the Association "form study circles to critically review contemporary legislation and examine problems of constitutional and international importance and give the benefit of their studies not only to the profession but to the general public as well."

The Association has always been watchful of the interests of the Bar and zealous of maintaining and safeguarding its privileges and whenever occasions arose has strongly agitated for the recognition of the just claims of the members of the Bar.

The addresses delivered during the course of the celebrations by eminent and responsible persons, which are reproduced in the following pages, contain among other things, valuable pronouncements on the place of the law and the lawyer in public life, the administration of justice, the necessity for an independent judiciary and an All-India Bar and the question of a common language which must all be given thoughtful and serious consideration by not only the members of the Bar but also by those in authority.

We wish the Madras Advocates' Association a greater and more glorious future.

INAUGURAL ADDRESS DELIVERED BY HIS LORDSHIP THE HON'BLE MR. P. V. RAJAMANNAR, THE CHIEF JUSTICE OF MADRAS.*

I must first thank the Madras Advocates' Association for the great honour they have done me by inviting me to inaugurate their Diamond Jubilee Celebrations. I particularly appreciate the honour because I have been a member of the Association for nearly a quarter of a century and I had the privilege of being its Secretary in 1939-1940. When the Golden Jubilee Souvenir was published, Mr. Narasimha Ayyar and I were the Secretaries. And I suppose that I can also claim by right of birth a share in the privilege which my father enjoyed of being its Secretary for a continuous period of ten years from 1923 to 1933.

As most of you know, this Association was born in the office of Rao Bahadur P. Anandacharlu on Friday the 1st March, 1889. Today it is celebrating its Shahstiabthapoorthi, but unlike a man who at sixty is weaker than when he was young, this Association is stronger than ever today. May God bless the Association with immortality. Forty years hence I hope it will celebrate its centenary though most of us may not be present to join in the celebrations.

It is impossible for a comparatively young man like myself to fully comprehend the enormous changes that have taken place in the country and in the profession since 1889 when this Association was started. Probably a veteren like your beloved President Sri V. V. Srinivasa Ayyangar may be able to describe graphically the picture then and the picture now. I shall give one example only of the change in outlook. The Executive Committee of the Association passed a resolution on 18th July, 1889, approving of the suggestion that vakils should wear gowns, and its first annual report records that at the instance of the Association the Hon'ble the Judges conferred upon vakils the privilege of appearing in gowns before the Court. On 6th December, 1889, the general body passed a resolution that vakils shall wear black coats and white turbans with or without lace and that it shall be optional to wear boots and trousers. After a cycle of sixty years we have arrived

*15th of April 1949

today at a stage when at least a section of the Association feels strongly like asking the Hon'ble the Judges for the privilege of not appearing in gowns or black coats.

This Association has had a glorious career. Among its Presidents and Secretaries we find such distinguished names as Raja T. Rama Rao, Dr. Sir S. Subramania Iyer, Sir V. Bhashyam Ayyangar, Sir C. Sankaran Nair, Mr. V. Krishnaswami Iyer, Mr. P. R. Sundara Iyer, Sir P. S. Sivaswami Iyer, Sir K. Srinivasa Ayyangar, Mr. S. Srinivasa Ayyangar, Sir Vepa Ramesam, Sir C. P. Ramaswami Iyer, Sir M. Venkatasubba Rao and Mr. T. R. Ramachandra Iyer. It has one of the best law libraries in the Presidency and undoubtedly in spite of shortcomings here and there which are inevitable, the Association has well fulfilled the purpose for which it was started, namely, "for the purpose of mutual co-operation and better safeguarding the interests of the profession." There is of course considerable scope for further development in many ways including making provision for the unfortunate members of the profession in distress and suffering.

If I am not being pedagogic, I have one suggestion to make. I wish some of the younger members of the Association form study circles to critically review contemporary legislation and examine problems of constitutional and international law and give the benefit of their studies not only to the profession but to the general public as well. For, neither the politician nor the senior lawyer has the time or the inclination to devote himself to juristic or theoretical studies.

It is a matter for gratification that the Hon'ble the Chief Justice of India should be able to preside on the concluding day of the Celebrations. His presence demonstrates the unity of the Bench and the Bar in a Free India. He has been himself one of the most eminent lawyers of Bombay and therefore one of you, and the interest that he has taken in you should serve you as a source of inspiration.

On an occasion like this I think I will be justified in speaking to you a few words about certain grave charges which have been generally levelled against the existing legal system and the scheme of judicial administration. I shall speak of them not as one with authority but as a citizen and a student deeply interested in matters vitally affecting all of us and I shall strive to steer clear of any vested interests or personal prejudices. The world itself is now passing through a most momentous epoch in its history. This may be a commonplace saying but for that reason it does not cease to be true. In addition to the problems which India shares in common with other countries, there are problems peculiar to itself which the advent of independence has thrown into prominence.

The first charge is that what is being administered today in Courts with the help of lawyers is only law and not justice. This charge is made not merely by a few irresponsible or ill-informed people but sometimes by highly educated persons occupying respected and responsible positions in the public life of our country. The implication of this charge is that the present system of administration of justice is not concerned with what is just or unjust and would not hesitate to perpetrate injustice on the ground that it was legal, *i.e.*, in accordance with the law. I shall endeavour very briefly, having regard to the distinguished nature of the audience, to analyse this charge and show that it is based on fallacies and assumptions which on account of their vagueness and inconsistency are dangerous and misleading. Now, it is quite true that what the Courts today administer and what the Courts base their decisions on, is 'justice according to law.' For one thing it is not justice according to the whims and fancies of the presiding judicial officer. It is not justice determined by tests of ordeal or by the drawing of lots. What is law? What does it consist of? Law, as you know, comprises the statutes in force, the personal law of parties as judicially interpreted and modified by custom and certain more or less general principles of jurisprudence, often described as principles of 'justice, equity and good conscience.' If the decision of a particular dispute is governed by any provision of a statute in force the Court is bound to decide in accordance with it. If the dispute relates to the rights of parties which have to be determined

by their personal law the Judge to the best of his lights tries to apply the relevant rules of law with the help of judicial precedents or a custom which has acquired the force of law. If, however, the nature of the dispute is such that neither statute law nor personal law can have any application to it, then the Judge is bound to decide according to the general principles of justice, equity and good conscience. These principles have become crystallised in their application to particular sets of circumstances by a course of judicial decisions. The Judge therefore ordinarily respects such established principles.

What exactly do persons mean when they level the charge that the Courts only administer law and not justice? They mean possibly several things. For instance, when they find that a particular provision in a statute is not in accordance with their own notions of what is just and proper and when Courts decide, as they are bound to, in accordance with such a provision, they exclaim that the decision may be in accordance with the law but is not in accordance with justice. A moment's reflection will convince you that the accusation on such a basis is wholly unjust and improper. There is not a single question on which opinion is not divided as to what is just and what is unjust. Apart from that aspect, if a particular statutory provision is oppressive or undesirable or unjust, the appropriate procedure to obtain redress is to bring about its repeal by legislation. No law is immutable or perfect. The Legislature has supreme powers. If there is a consensus of opinion or even an overwhelming body of opinion that a particular statute or a particular provision in a statute is obnoxious to the prevailing conceptions of what is just and proper, then surely legislation ought to be and will be undertaken to remedy the evil. But till that is done one cannot expect a Court to disregard a statutory provision in force. Likewise, with rules of personal law though here we are in a realm of doubt and uncertainty and conflicting ideology. To give only one instance. There are thousands today who sincerely believe that it is injustice to deny the daughter a share in her father's estate, but there are also thousands who equally sincerely believe that it is unjust to compel the son to share with the daughter. It cannot be that these critics want judges to decide disputes not according to established rules of personal law but according to their individual notions of what should be the personal law of the parties. Equally it is clear that if tomorrow the Legislature enacts a provision enabling the daughter to share with the son the estate of their father and a Court of law applies, as it is bound to, the new enactment, it will be idle for those who may hold an opinion contrary to the enactment to say that such a decision may be in accordance with the law but is not in accordance with justice. When we come to general principles of justice, and equity, there is again a difficulty. Where are these principles to be found? For one thing, to find them in reported decisions of eminent Judges is to assure both the litigant, the lawyer and the Judge of some certainty. But in this sphere Judges at least of the highest tribunal do enjoy more freedom than in the other spheres of statutory law and personal law. A principle of law considered to be just and equitable by Judges of one age may be dissented from and overruled by Judges of a succeeding age when there has been a change in the prevailing notions of what is just and proper. Lastly, in cases in which no established general principle is available for assistance, a judge enjoys the utmost freedom in finding for himself a legal principle in accordance with justice.

Sometimes when the critics make the above charge they have in mind individual cases. Occasionally the law may appear to be harsh in its application to an individual case. It may be that the framers of a particular provision did not contemplate its application to certain circumstances and did not provide for exceptions. A Court which cannot itself embark on legislation naturally applies the statutory provision and the result may on occasions be, it may be confessed, one not contemplated by the framers of the statute. Then people remark "That may be the law, but that is not justice." But I am sure they would one and all subscribe with enthusiasm to the greatness of the conception of justice as a blind goddess holding the scales even, making no distinction between person and person and

that every person is equal before the law. Only they fail to recognise that the logical and inevitable result of this conception of equality before the law is that in individual instances the law may appear to lead to injustice ; but nevertheless the law must be applied irrespective of the consequence in individual cases.

The practice of hard cases making bad law may lead to judicial dishonesty of a peculiar variety and as there are always two sides in every dispute it may mean injustice to the party who is being deprived of a right to which he is entitled under the law of the land.

Again and again in the history of the world, particularly at times like the present of disillusionment and doubt, simmering with revolutionary ideologies when there is a tension between tradition and progress, the idea of absolute or natural justice has an irresistible appeal to persons who are dissatisfied with the existing state of things and consequently with the system of law and judicial administration which appear to them to perpetuate such a state. The search of mankind for absolute, natural justice is an age-long search but a search which has always failed. But this failure was inevitable ; it was inherent in the search itself. This is because mankind's notions of justice in the different spheres of human activity and relationship have changed and go on changing with changing social, political and economic conditions. For example, there was a time when the conception of freedom of contract appeared to be an essential feature of justice between man and man. But changed economic conditions have revealed that in certain circumstances freedom of contract may be a travesty of freedom. Ideas of social and economic justice brought about a change and consequently we find legislation restricting freedom of contract. In Russia during the first revolutionary period the only written laws to be applied were the decrees of the Soviet Government. If there was no Soviet law ruling the issue, then "the socialist consciousness of justice had to decide." During the second revolution the judge was no doubt given freedom of decision which was regarded as characteristic of revolutionary law, but law was understood as serving the needs of revolutionary developments as opposed to formal and conservative legality. Revolutionary legality and revolutionary consciousness of justice were deemed to be the correct application of the law in the sense intended by the revolutionary State. According to the socialist legal theory all desirable evolution of the economic life must find its expression in the laws. In course of time, however, the Soviet Civil Code was enacted to give some amount of certainty to the law (*vide* Schlesinger's Soviet Legal Theory).

In a discussion of this subject the big question which arises is, what is the function of law ? Is it to verify and formulate existing usages and notions of traditional justice or is it to be used as an agent of progress ? Recent tendencies have been to look at law from the latter aspect, to perceive it against the social background and the needs of contemporary life. There has been a systematic attempt to adjust in accordance with the prevalent ideas of the time of social and economic justice the relative and respective claims of employers and employees, of landlords and tenants, etc.

It cannot be gainsaid that ultimately every ideal of justice must be taken from the political theory and philosophy of life prevalent at the time. The eternal problem, whether the individual or the community or the group is the ultimate yardstick, is a problem which is solved in different ways at different times. Broadly speaking, the solution has been either a subordination of one to the other or an attempt to blend the two rival claims.

Is there any likelihood, one may ask with a sense of frustration, of this conflict ever ceasing ? Will the quest for natural and absolute justice be ever successful ? In other words, will there be ever a time when justice according to law will be interchangeable with the conception of law according to justice ? The answer depends not on legal theory or ratiocination but on human conduct and morality. So long as man is selfish, the conflict is bound to be there. "Individuals or small groups coveting power or wealth use the organisation of a political community

for their purposes. Modern dictators use the masses for their ambitions and disguise it under the name of some collective idea, be it state, nation or race."

I believe I have fairly indicated how impossible it is to depend on more or less vague notions of absolute or natural justice in the decision of disputes in a suit. Hamilton, L.J., (afterwards Lord Sumner) referring to certain dicta of Lord Mansfield made the somewhat caustic remark : "Whatever may have been the case 146 years ago, we are now not free in the twentieth century to administer that vague jurisprudence which is sometimes attractively styled justice as between man and man." (1913, 1 Ch. at 140).

Ancient Indian writers on law well recognised the limitations of the application of natural or absolute justice and that *apriori* notions of what is just should yield to local usages and enactments by the State. The four kinds of law applicable in the decision of a disputed case were Dharma, Vyavahara, Charitra and Nripa Ājna. Dharma here comprises what we may call *apriori* natural justice.

दोषकारी तु कर्तृत्वं धनस्वामी स्वकं धनम् ।
विवादे प्राप्नुयाद्यत्र धर्मेणैव स निर्णयः ॥

An offender is convicted ; money is adjudged in favour of the owner. This corresponds exactly to what a learned writer on legal theory has said : "Punishment must redress crime. Reparation must redress civil wrong. Damages must restore wrongful gain."

Vyavahara is defined thus :

स्मृतिशास्त्रं तु यत्किंचित्प्रथितं धर्मसाधकैः ।
कार्याणां निर्णयार्थे तु व्यवहारः स्मृतो हि सः ॥

This consists in the application of a Smriti rule as propounded by those who were learned in Dharma. It is interesting to read the definition of Charitra :

यद्यदाचर्यते येन धर्मं वा धर्ममेव वा ।
देशस्य चरणान्नित्यं चारित्रं तत्प्रकीर्तितम् ॥

It is significant to note that an usage even when it is not in consonance with Dharma is binding. Lastly, we have the Raja Sasana which supersedes Dharma, Vyavahara, and Charitra.

न्यायशास्त्राविरोधेन देशदृष्टेस्तथैव च ।
यं धर्मं स्थापयेद्राजा न्याय्यं तद्राजशासनम् ॥

Giving modern names, these four would be (*i*) rules of justice, equity and good conscience or natural law, (*ii*) common law, (*iii*) custom and (*iv*) legislation.

The second major charge levelled against the present legal system and administration of justice is that it is very complex and cumbrous. The cry is for simplicity almost pristine in character, with an emphasis on panchayats and a tirade against Courts and lawyers. Some of the critics often speak of the good old days in which there was no litigation and there were no lawyers. I am afraid that such persons are evidently speaking, if they are speaking of facts, of the days immediately preceding the advent of the British and other foreign trading companies, when after the break-up of the Moghul Empire there was practically no centralised government and no established hierarchy of administration or judicial institutions. They forget that they were among the worst days in Indian history. They equally overlook that it is only when there is a strong and stable government and a centralised administration of justice there could be anything like the development of a scientific system of law in the modern sense. In the really great and significant

epochs of Indian history, whether under the Hindu rule or the Muhammadan rule, there was a fairly complex and developed judicial system for the administration of justice, civil and criminal, and in accordance with defined and binding legal rules and juristic principles. There were no doubt panchayats but there were also original and appellate Courts besides. Those who are sceptical or curious may find a surprise if they read books like the recent collection of lectures delivered by one of our most distinguished lawyers Sir S. Varadachariar published under the title "The Hindu Judicial System." Those who have sometime to spare can discover very interesting material on the subject in Kane's Monumental History of the Dharma Shastra. You find in the Smritis and other text books eighteen topics of litigation or *Vyavahara padas*. I shall mention only some of them : *Rina Dana*, *Aswani Vikraya*, i.e., sale by one not the owner, *Sambhuya Samutthana* (partnership), *Samvid Vyatikrama* (violation of contracts), *Sima Vivada* (boundary dispute), *Vak Paruṣya* and *Danda Paruṣva* (abuse and assault) non-payment of wages, non rendition of service and dispute between master and servant (*Swamipala Vivada*)-*Steya* (theft), *Sahasa* (crimes of violence), *Stree Sangrahaṇa* (adultery, kidnapping, etc.) *Stree Puruṣa Dharma* (duties of husband and wife), *dyuta samahvya* (gambling and prize-fighting), apart from well-known categories like Dayabhaga, Dattaka, Stridhana and the like. A few interesting facts relating to the rules governing law-suits, I shall now give you. A plaintiff could ask for four kinds of interlocutory orders against a defendant in certain circumstances, in the nature of injunctions and prohibitory orders with which we are familiar. The four restraints were regarding place, time, leaving jurisdiction and doing certain actions, for example, selling property or ploughing a field . In civil disputes nothing by way of court-fee was payable at the inception of a suit but after the suit was decided the debtor, in cases of suits for recovery of debts, was made to pay to the King a percentage of the amount decreed. The successful creditor also was made to pay a percentage of the amount decreed. When the debtor denied the fact of debt and the creditor succeeded in establishing it, the debtor had to pay the amount decreed to the creditor and an equal amount to the King as fine. If the plaintiff turned out to be a false claimant then he had to pay to the King as fine twice as much as the amount claimed by him.

There were elaborate rules as to adjournments. The plaintiff was expected generally to be ready with his case even on the date of the filing of the plaint. This was because he was presumed to come to Court after gathering all the material to prove his case. The defendant was allowed in some cases three or seven days for his defence and if he did not deliver the defence within the time prescribed he was punished with fine. In criminal cases, in certain matters the defendant was to make his defence at once but in other cases time might be granted at the discretion of the Court. Adjournments were more liberal in disputes about gifts, partnerships, transgression of conventions, partition of heritage, etc. Gautama prescribes immediate trial when the matter is urgent, *i.e.*, where loss or abandonment of the thing will be the result of the delay. Even the grant of a year's adjournment may be allowed if the defendant is an idiot or lunatic or if the subject of dispute and the witnesses are in a foreign country. There was provision corresponding to Order 9, rule 13, Civil Procedure Code, that if the act of God or the King prevented the defendant from making his defence, he should not be declared defeated but time should be granted to him to prove his defence. The four stages of a law-suit in those days correspond to the four stages even now obtaining. The rules of pleading were very strict. The requirements of a good plaint and of a good defence are given in great detail. There were different kinds of documentary evidence and rules of proof in respect of them. Among private documents we meet with familiar documents like *vibhaga patra*, *dana patra*, *kraya patra*, *adhana patra*, *samvit patra*, *rinalekha*, *sima patra* and *anvadhi patra*. I have mentioned all these facts only to clear away a mistaken notion that in ancient days to which reference is often made, our people were enjoying a life free of laws, courts and lawyers and that we have now fallen on evil days.

Apart from the fault of a false factual hypothesis there is also another defect in the charge. I have never been able to appreciate the consistency of persons who talk of simplifying law and going back to the panchayats, at the same time emphasising the need for establishing large-scale industries, international trade, maritime activity and similar enterprises of a most complicated nature involving necessarily adjustments of various conflicting rights and obligations. Undoubtedly the legal and judicial system today is much more complicated than it ever was but this is the inevitable result of individual and national life having become increasingly complicated and complex. To give a concrete instance, in the days when everyone in the villages had to fetch his pail of water from the well in his compound there was very little scope for the application of laws or the operation of the judicial system but today when hundreds and thousands have to depend for the water they need on municipal supply from pipes, a little study and analysis will reveal how much law is involved in the various transactions leading up to the simple matter of obtaining water to drink. The following passage from Lord Macmillan's address on "The Law and the Citizen" graphically explains the complex legal system which is involved in such simple fact of everyday life as water supply. "You rise in the morning and take your daily bath. Have you ever thought of the elaborate legal procedure which has preceded the simple operation of turning on the tap? The water supply which you so easily take for granted has been drawn from a river or pumped from underground sources or impounded on gathering grounds miles away and brought to your home by an intricate system of pipes. Think of all the rights and the interests which have had to be dealt with before this result was achieved. Landowners may have had to be compensated for the use of their property, the rights of mill-owners and of navigation and fishing may have had to be considered, way-leaves obtained, streets opened and so on * * But this is not all; the scheme which brings the water to every household tap has to be administered and financed and this in turn necessitates the utilisation of the vast apparatus of local government law, with its many branches, * * * * rating, inspection and the like."

Having said all this, I must also say that there is a great deal of needless complexity and cumbrous procedure which calls for reform. In the Law of Evidence there is a great scope for improvement. Even in substantive law there is need for change on account of changed outlook on legal relationships. As a great American jurist observed: "Law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and of the need of change." The struggle of law has been between tradition on the one hand and progress on the other; stability and change; certainty and elasticity. This roughly corresponds to the conflict between law and justice. But legislation to remedy the evils and to help the country to advance on progressive lines must be undertaken after due deliberation and study of legal history in its social context. "A mere guess of politicians combined with the skill of a legal draftsman is not an adequate basis of law reform. Nor is a mere armchair analytical legal study of existing or alternative rules." There should be a preliminary exploration of social facts as a regular part of the legislative process. It is not sufficient merely to formulate rules which the politicians in power think are desirable on paper. It should be ascertained after inquiry whether such rules can be effectively enforced in the existing social and economic conditions. Otherwise legislation may result not in the promotion of welfare but in the causing of misery.

I have one suggestion to make though I am not very sanguine as to its acceptance. There should be established a separate department of government with expert personnel from outside the class of party politicians. This department must be engaged in juristic studies and social inquiries which have to precede legislation and legislation should never be the result of mere onesided lobbying. This department should be a body of experts both for long range investigation and for dealing with the day to day complaints and defects in the actual operation of the laws and

for making proposals for improvement. Of course, lawyers must find a permanent place in such a department. This device would prevent both hasty legislation as well as legislation undertaken purely on party lines.

Lawyers have indeed a great role to play in the building up of the legal theory of the future. But the lawyer cannot be too conservative. The lawyer as much as the politician and the legislator is concerned with social change. He must play his part and a leading part in social reform which is the basis of legal reform. The lawyer cannot shut his eyes to the great issues of national life. There is no escape for him into an ivory tower away from the struggles of life. He is most competently equipped to discover the flaws in existing laws and their inadequacy to fulfil the social ideals of the day. He has also ample opportunity to assist social progress by drawing the attention of the Legislature to the need for changes in the law. Professor Harold Laski has some very hard things to say about lawyers in his recent book " The American Democracy." After pointing out that the American lawyers have failed to convince the public that the legal system of the United States including its judicial institutions is adequate for the problems with which it has to deal, the learned author says : " There is still delay in the Courts ; there is still a massive uncertainty ; there is still the high cost not only of litigation, with its possibilities of appeal, but even of consultation before a case is heard in the Courts. Now, as always, the number of practising lawyers who can be aroused to an interest in legal reform remains pitifully small. * * Now, as always, the conflict over technicalities, mostly procedural, between Judge and lawyers, takes more time than is occupied by the actual evidence." In his opinion it is not possible to acquit the legal profession of a high share of responsibility for evils which quite plainly can be tackled. The difficulty mainly lies in the " apathy of the legal profession." Two tests he lays down of the influence which go to make a profession worthy of the title it claims. The first is what it does for the poor who, normally, cannot afford to avail themselves of its services at the regular fees ; and the second is the scale upon which it embarks upon the effort necessary to adjust the law to the needs of the time. And he ends with the following bitter remarks : " But I think it is no unfair judgment to say that, despite islands of interest in the great ocean of indifference, lawyers generally remain unconcerned ; they regard the public as a source of income and not as an object of obligation ; and it is especially notable that the more successful the lawyer, the less likely is he to be alert to the social relations of his profession. That is even the case where some sudden wave of public opinion searches for an adjustment in those relations. Too often, where that occurs, the successful lawyer is more likely to oppose change than to forward it."

The Madras Lawyer has always been famous for the subtlety of his intellect and the keenness of his legal acumen. These qualities should be used to assist the country on the way to progress and should not stand in its way.

I wish the Advocates of Madras and the Advocates' Association a great and glorious future.

ADDRESS BY SIR C. P. RAMASWAMI AIYAR.*

Throughout my life I have tried to remember that I am and continued to be a member of the Bar. Your Association is the foremost organisation of lawyers in the Presidency, and, I would say, it yielded in no manner to any similar organisation in this country or elsewhere. There is no part of the civilised world where they had a body of lawyers who, for acumen, subtlety and cogent reasoning and argument, could surpass, even if they equalled, the members of the Madras Bar. They had illustrious exemplars of advocacy and pleading. They had given to the world men who made law their engrossing passion. Men like Sir V. Bashyam Aiyangar and Mr. S. Srinivasa Aiyangar were passionately "addicted," if the expression could be employed, to the principles of law, their application and its minutiæ. From Sir S. Subramania Aiyar, going through the illustrious line,—Sir C. Sankaran Nair, Mr. V. Krishnaswami Aiyar, Mr. P. R. Sundara Aiyar, Mr. T. V. Seshagiri Aiyar, Mr. T. Rangachari, Sir K. Srinivasa Aiyangar and Mr. S. Srinivasa Aiyangar—they found men who shone by the impetuosity of their argumentation, men who preserved serenity and equability and calm amidst all the tribulations and trials of a forensic career, and devoted their dispassionate minds to the cold analysis of law, and sought to instruct rather than overwhelm. Men like Sir P. S. Sivaswami Aiyar, Mr. J. L. Rozario and in an earlier generation, men like Mr. A. Ramachandra Aiyar and his own father, Mr. Pattabhirama Aiyar, distinguished themselves by their coolness amidst all the difficulties of their profession. The Madras Bar had given to the world men of whom any profession might be proud. It was but fitting that in the sixtieth year of their existence, the Association took account of what had been done and also the task that yet remained to be done and began a new life full of pride, hope and aspiration. The Association had also given illustrious Judges to the Bench, not the least of whom was the Chief Justice, Mr. P. V. Rajamannar.

The subject I have chosen for my address on this occasion is *audi alteram partem*—hear the other side. I wish merely to emphasise at this juncture of national and international affairs the importance of realising and keeping in mind always that there were two sides to every question and that we must hear the other side also.

The present century appeared to be tending to an outlook radically and fundamentally different from that of earlier centuries. The political ideal of the phase we had passed through was freedom, struggle for freedom and acquisition of freedom. The phase now beginning might be said to concentrate primarily and essentially on social and economic justice rather than on freedom. With a wholly comprehensive and purposive outlook on life, it insisted on an economic minimum for each person and leisure for the ordinary man. It was "a synthetic age" in which Government, whether one liked it or not entered every phase of life, social, economic and educational, and even broadcasts, radio, amusements and entertainments. Recent controversies regarding industrial tribunals, the growth of rule-making powers which daily tended not only to be more accentuated but more comprehensive and more minute and compelling, creation of new institutions not subject to the Courts,—all these had given rise to new ways of thought and new modes of approach to different problems.

In these circumstances, it is the function and duty of lawyers to insist on the maxim, *audi alteram partem*. It was the duty of every lawyer to illustrate and exemplify that maxim. In a suggestive legal pamphlet† Mr. K. V. Krishnaswami Aiyar had said that law embodied a constant striving of the human spirit after the Right, and that there were two opposing forces contending in this connection,—one for giving even the devil his due and the other functioning as the "Devil's Advocate." Some of the greatest men of the world and the greatest champions of human freedom had been those who had striven to right injustices.

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* 16th April 1949. † (1949) 1 M.L.J. Jour. 51.

Voltaire and Emile Zola, for instance, recalled the valiant struggle of great men to vindicate those who had been unjustly condemned, unheard. There was as much necessity to-day as there ever was of being alert in this respect and of not losing sight of the maxim *audi alteram partem.*

There was always the danger of totalitarianism especially where democracies were concerned and where great bodies of men come into being and functioned. I am not referring to any one particular country or other. I am sure you have read Lord Hewarts "New Despotism", where he has traced the rule of law and what was called "administrative law" and said that the rule-making power of the Executive transcended these and he levelled very strong criticism against this method. He said that in such legislation there was an evasion of the Courts making the will or caprice of the Executive unfettered and supreme. It was not enough to rely on the press or the radio to deal with the matter and enable the other side to be heard. Political movements very often started with an emphasis on liberty. When liberty was achieved, the emphasis naturally and inexorably turned on equality. Majority rule soon became impatient of forms and ceremony which restrained or resisted its desires ; then arose talk of "breaking through red tape," plans for confiscation of property or interests without compensation, etc. Where private interest conflicted with public good, the democrat was too often apt to assert that the former would be ruthlessly dealt with. There was an insistence on the preponderant strength and will of the majority working through political forms. This insistence should not lead to unconscious enslavement so that private opinion remained unheeded, and the viewpoint of the majority for the time being alone became preponderant. Anyone who stood aloof and anyone who could not show that he was working for the good of the majority,—the good of the majority always being called the good of humanity at large—was apt to be condemned. The result was intolerance of racial, religious, and political minorities and minority opinions. Democracy had come to stay and was bound to flourish. India's Government, with all their handicaps and difficulties, had shown that democracy could work here. But let us not forget that democracy flourished best on co-operative independent and fearless speaking out. The risk to be avoided—he was sure India would avoid it—was the development of conformity on one side and instinctive aggressiveness on the other. Hence the importance of law and lawyers in democracy, as well as of constitutional forms, and of an unbiassed Legislature willing to hear both sides. To hear both sides was easily said, but what was essential was to heed both sides. That was the significance and import of the expression *audi alteram partem.*

WELCOME ADDRESS TO THE CHIEF JUSTICE OF INDIA

BY

THE ADVOCATE-GENERAL OF MADRAS, MR. K. RAJAH AIYAR.*

There are certain events and occasions which remain indelibly impressed in a man's memory all through his life, and I reckon to-day's function one such. I consider it a rare privilege and honour to welcome you, Sir, the first Indian Chief Justice of India's Supreme Court to our midst to-day to preside over the Diamond Jubilee Celebrations of the Madras Advocates' Association. We, of the Madras Bar, cannot sufficiently thank you for the readiness with which you accepted our invitation, and agreed to travel all the way from Delhi at this part of the year, when summer is already holding us in its grip. We know also how precious and valuable your time just now is and how you can ill afford to spare even one day from the heavy and accumulating work of the Federal Court. But it is our good fortune that you put aside all these considerations of personal inconvenience and

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* 17th April, 1949.

otherwise and responded to our request. Your august presence has without doubt greatly enhanced the felicity and grandeur of the function, and we can assure you, Sir, that we feel greatly honoured and complimented.

This Association was born on the first of March, 1889. The foundations were laid by 24 members who may well be called the Founders of the Association; and a glance at their names is sufficient guarantee of the strength and stability of the foundation laid by them on which the present edifice has grown. We find the hallowed names of men like Sir S. Subramania Iyer, V. Krishnaswami Iyer, P. R. Sundara Iyer, V. Bashyam Iyengar, Sir P. S. Sivaswami Iyer, T. R. Ramachandra Iyer, Raja T. Rama Row, who played such a historic part in the legal life of the Presidency. The Association has grown from strength to strength and in the year 1939, the Golden Jubilee was celebrated on a grand scale; and it is with pride that I recall the fact that I was one of the Secretaries of the Association at that time. Ten years have since elapsed, and to-day we are celebrating our Diamond Jubilee. What great changes have been wrought in the history of the Globe and of India during these ten eventful years; World War No. II has been fought. The Allies have won the war and are trying to win the peace. India has fought her freedom's battle, and achieved independence under the leadership of Mahatma Gandhi, himself a member of our fraternity who, as the apostle of truth and non-violence gave a new orientation to a world groping in darkness and hate.

As our Chief Justice observed in his inaugural address, the completion of the sixtieth year in the life of an individual normally signifies the point of time, at which the glory is in the retrospect and not the prospect, but in the case of an institution, the achievement of the past three score years only render the present pregnant with possibilities of a more glorious and useful future, and the charms of the prospect are not less than the retrospect; and I have no doubt that the same will be true in the case of Madras Advocates' Association. Let me hope that the gentleman who then welcomes the President of the day, will recall these words of mine and say that my prophecy has come true.

It is an acknowledged fact that Madras has in the past produced lawyers of great distinction and renown who have left their mark, not merely in the field of law, but also in the political history of the country. We, of Madras, can justly claim with a feeling of pride that the vakils as we were then known, had established their ascendency over the English Barristers much earlier than the other Presidencies; and that with notable exceptions like Mr. Eardly Norton and Nugent Grant, it was a rare thing to find English Barristers making successful headway as against the giants of the Bar of the type of Sir V. Bhashyam Iyengar and those who followed him. Our Presidency has sometimes been dubbed a "benighted one," our soldiers have been classed as non-martial, and in the landscape of India, we occupy a southern corner; and occasionally we feel that in the clash and conflict of interests which centre round the distant capital of India, the Province of Madras is not given its proper place. But all that we can say is that Madras has amply proved itself capable of holding its own, whether in the field of battle or in the field of law or in the Councils of the Nation.

I believe we can justly claim that our Advocates' Association is the oldest and the largest of its kind in India. I do not know if other Presidencies can boast, either of such a long record of existence or of such a large number of members. Beginning from 24 in 1889 we are now 700 strong; we have spread ourselves out into two spacious floors of the High Court in its western wing and yet we find the accommodation insufficient. We may also mention to you, Sir, that in our Presidency, we have another body called the Provincial Bar Federation which is a Federation of all the Bar Associations of the Province including the Advocates' Association, Madras and which, since its inauguration in the year 1945, has been functioning successfully, organising Lawyers' Conferences each year and doing useful work.

You, Sir, are coming from a Court to which we turn our eyes for our inspiration and guidance. Ere long, the Federal Court will evolve into and become the Supreme Court and the Final Court of Appeal and the Privy Council will become a thing of the past. I remember to have read a story somewhere—whether it is true or not, I do not know—of how in the days long gone by, the villagers of some place in Northern India set up an idol of the Privy Council and were worshipping it and celebrating a festival, because the Privy Council had rendered a just decision in some sensational matter. There is no doubt that the Privy Council has had a halo and an enchantment about it not due wholly, as the old adage has it, that distance lends enchantment to the view ; and we look to the Supreme Court to continue the traditions established by the Privy Council, and be to India what the Supreme Court has been to America. It is only the other day that Mr. Anthony Eden on his return to England from his tour of India remarked that it might be asked what legacy Britain had left to India, but that history would bear out that England's greatest contributions to India was the Parliamentary system and the legal system. I have little doubt that the vast majority of those assembled here will accept and endorse the justice of the claim. I do not wish to be understood as implying in the least that Ancient India had not its own legal system, nor do I wish to be understood as saying that the English system represents the acme of perfection. But the English judicial system does stand a comparison with other systems in the world and has the virtue of elasticity and adaptability so as to keep in tune with the changing conditions of modern life and the demands of the new social order. I do not deny that it has its own shortcomings and defects. This is neither the occasion nor the place for me to dilate upon them, but I have every faith and hope that our great leaders, judges and lawyers can take the best of the systems of the world and fashion out a system eminently suited to the genius, tradition and outlook of this great land and representing a happy synthesis of the East and the West. Legislators, Judges and Lawyers should co-operate in the direction of bringing about this reform and should not move in proud isolation. Some agency must be found to mediate as it were between them. The duty must be cast by the Legislature on some group of men who will watch the law in action, observe the manner of its functioning and report the changes needed. Since 1924, Bodies called the Judicial Councils have been established in America ; and in England there has been the Law Reform Commission. Our Chief Justice has in his address indicated the lines on which action might be taken in this country.

We have followed with great interest your utterances in other places regarding the independence of the Judiciary. Such independence is not the interest of any mere faction or party or of any individual ; but the common interest of every citizen of India. Independent India should do all it can to foster and encourage an independent Judiciary. The confidence which the people have in the Courts of Justice in the land is the one solid foundation on which the real liberty of the individual can ultimately rest. The freedom of thought and of speech which modern democracy is fighting for against the dark forces of Fascism or Communism would be a mockery if there were no Courts in the land to uphold and vindicate such freedom and without the aid of an independent Judiciary, the chapter on Fundamenal Rights may well prove an ineffective charter.

The separation of the Executive from the Judiciary is perhaps as important as the independence of the Judiciary. The soundness of the doctrine in theory has always been accepted ; but the application of it in practice has been deferred from time to time for one reason or another. The Government of Madras appointed a Committee as early as 1945 of which I was the Chairman and a scheme was eventually got ready ; and the public have been eagerly expecting that it would be put into force. I see that some of the other Provinces have also taken up the matter on hand.

We are on the eve of vast changes fraught with momentous possibilities. The political map of India is being reshaped in a manner which the boldest amongst

us did not dream of as within the realms of possibility even a year back. What, with all their arms, the Rulers of India could not achieve in the past, the dynamic personality of the Deputy Prime Minister has achieved. We have heard of the saying that the pen is mightier than the sword, but here we see a new force which has achieved more than either the pen or the sword. States, big and small alike, are wholeheartedly and cheerfully merging themselves and integrating into a common India, and renouncing the symbols of their personal sovereignty in the large interests of the nation as a whole. This is just as it should be. Nations have begun to realise that it is only in collective security that the safety of the individual State lies. The Atlantic pact is the latest instance of this growing realisation. Similarly in our country, people have begun to realise that, beset, as we are with hostile elements within and without, the need of the hour is integration and not disintegration. Ten years back it was impossible to bring the contemplated Federation into existence and three years ago, it was thought that only three subjects could be common to the Indian Union and the States. Now, however, the picture has changed; and I venture to say that the day is not far distant when India will have a common Bar, common laws (subject only to minimum local variations) and a Central Supreme Court whose writ shall run through the entire length and breadth of India. It may be that for some time to come, loud and indignant voices would be heard from several quarters, striking a dissentient note which, if followed, would tend to destroy that unity, I am envisaging. I am referring, for example, to the controversy over the language of the Courts which, if adopted in the diverse ways in which suggestions have been made, might well result in a babel of tongues in the Courts of the land. One is not certain whether some of the tendencies of the present day are not the result of a feeling that freedom from British Imperialism is not complete without forswearing everything that belongs to or savours of the West. But I venture to feel that when the complex dies down, we will do everything to maintain the majesty of the law, the dignity of the Courts and the independence of the Judiciary.

I feel, Sir, that the time has come for the establishment of an All-India Bar. The Madras Provincial Lawyers' Conference which met during Christmas week, unanimously decided that steps should be taken to constitute an All-India Bar. The idea is that there should be a unified Bar for the whole of India, members being enrolled by a central organisation and allowed to practice in all the Courts in the country and subject to the disciplinary jurisdiction of the central body to be constituted. It is unnecessary for me to dwell at length on the advantages of having an All-India Bar, now that the Supreme Court as the final Court of Appeal will be established under the Constitution. I may incidentally refer to some anomalies which exist at present and which can be removed only by constituting an All-India Bar. For instance, a member enrolled in the Federal Court is competent and allowed to appear in a case before the Federal Court arising from any Province, say Bombay or Madras, but such member is however precluded from appearing in the High Court in which he is not enrolled. The position of an Advocate of the Federal Court is therefore anomalous. While he is permitted to appear in the highest tribunal of the land, he is precluded from appearing in one of the Courts subordinate thereto.

The absence of an All-India Bar has affected the position of the members of the legal profession in the International field though the Prime Minister of India has otherwise established a leading place for India in the International Sphere.

The question of having an All-India Bar on a model of the General Council of the Bar in England is linked up with such matters as amendment of the Indian Bar Councils Act, prescribing uniform standards of legal education throughout the country also framing uniform rules for disciplinary action and adopting a uniform and simplified dress suited to the climate and conditions of this country. These matters will have to be considered by the representatives of the profession from all the Provinces of India as well as by Judges and politicians.

The brotherhood of the Bar must not be circumscribed by any parochial considerations or geographical limits. It must transcend all considerations of Provincialism and vested interests. I believe that an All-India Bar will be one of the most potent factors in consolidating the national life of India and promoting uniformity of law and the administration of justice; and I would appeal to you, Sir, to throw in the weight of your great influence in the direction of bringing into existence an All-India Bar.

We, in Madras, are very fortunate in having as our Chief Justice one who is imbued with the highest ideals and who by his example has demonstrated that the interests of the Bench and of the Bar are identical. While on the Bench, he is yet in the Bar. We are indebted to him for several ideas which he gave us in connection with this very function and for allowing us to celebrate the Jubilee in the High Court, and in front of the statue of Sir T. Muthuswami Iyer, our first great Indian Judge.

Once again I thank you for your presence in our midst to-day. We wish you had seen our High Court in action, its long corridors buzzing with activity but in life we do not always get all that we wish for.

ADDRESS BY THE HON'BLE SIR HARILAL J. KANIA, CHIEF JUSTICE OF INDIA.*

I consider it a privilege to be invited to address this gathering on the occasion of the Diamond Jubilee celebrations of the Madras Advocates' Association. The Association was started in the eighties of the last century and has attained the mature age of sixty years. It is opportune to review its work and make up the deficiencies, if any. The experience of sixty years should be utilised for the betterment of the Association and the members of the legal profession.

As this Association has been registered under the Literary and Scientific Society Registration Act, unlike unregistered associations, its objects are not vague. They are declared to be to maintain a high standard of professional conduct, to protect and promote the interests of Vakils, to make representations to the authorities on matters affecting the profession and to form and maintain a library. With your steady efforts I notice that you have brought into existence a good library for you. From early times, the Vakils here have enjoyed substantial rights and privileges. Their position has generally been more advantageous than the pleaders of Calcutta and Bombay. For this credit must go to the authors of the rules framed for the admission of the Vakils on the rolls of the Madras High Court. For many years they have been entitled to plead and act on the original and appellate sides of the Court. On the abolition of the Sudder Courts, when the High Court was established, they had to compete with the European members of the Bar. In order that legal talent may be sufficiently equipped, the qualifications laid down in the rules for admission as a Vakil provided for their training in an Advocate's chamber. Those provisions showed great wisdom. Instead of a raw law graduate starting practice at the Bar and being pitched against a trained and experienced lawyer, the rules, in addition to the book learning and the passing of an examination, thus compelled the man to undergo a practical training. This was planned to make him a practical and astute lawyer, if he possessed the necessary qualities. Till recently only a few careers were open to a young man in India. Law was therefore taken up as a career by many young men and the profession is therefore naturally over-crowded. The desire to earn money, soon after enrolment as a Vakil, perhaps due to the necessities of life, makes several law graduates start practice without gaining practical experience in the office of a senior. One regrets the fate of such lawyers because without experience they are bound to fail.

*17th April 1949.

in most cases. This will naturally dishearten them because they will realise their mistakes and shortcomings after their failure and will, in effect, be hurt more because clients will not come to them. In the profession, it is obvious that the rule of the survival of the fittest is always operative. The Bar attracts an average person because of the large income earned by people at the top. It is not realised that people at the top could be counted on one's finger-ends and contrasted with that number, those who do not earn sufficient to pay even income-tax are far more numerous. The necessity of acquiring experience under a senior cannot be emphasised too much. Omission to work in that way generally prevents a young lawyer from getting practical experience because who will brief a junior if he has the option to get a senior? It is only by working in the chambers of a senior that a junior lawyer gets an opportunity, when a senior is unable to attend, to conduct a case and show his true mettle.

One of the main objects of the Association is to maintain a high standard of professional conduct. In my opinion, that conduct consists in following three cardinal principles, *viz.*, (1) Be true to yourself; (2) Be true to your client; and (3) Be true to the Court. The first principle is a duty to yourself and your own conscience. After collecting all the material and relevant facts from your client you must remember that while in the conduct of a litigation you are the mouthpiece of the client, no one has a right to ask you to do a thing which is wrong in law. No law in the technical or moral sense of the word compels you to act against your own conscience. The second principle is based on the honesty of purpose of the profession. If after collecting materials for the case from the client you find that the client is not likely to succeed, it is your duty to convey that opinion to your client, irrespective of the question whether the client will employ you or not. In that way you save men from wasteful litigation which may ruin them. It is possible that some clients may not like or appreciate your advice and will leave you. Do not be afraid of that. The same clients, or their friends, after failing in the litigation, will realise the value of your advice, and come to you, if they have another litigation. The third principle is founded on the basic fact that you are an integral part in the administration of law and justice. You owe a duty to the Court to put the facts correctly and honestly and not with a view to misguide or mislead it. Mostly even if an attempt is made to act otherwise, it will fail. In any event if you ignore this principle you will have hardly any reputation among your colleagues and no respect of the Court. Never try to mislead the Court by propounding a proposition of law, which you know is wrong. It is your duty to help the Court in arriving at a *just* conclusion according to the law of the land. Lack of appreciation of this code of conduct has been more frequently noticed recently. I am sure the members of your Association appreciate the value of this standard of professional conduct and strive to live up to it.

The ambition to establish one Bar for India is natural. If individual selfishness and group intrigues are avoided, it will be possible for you, in the first instance, to have a unified Bar in the Province. If each Province in the country takes that as the first step towards unification, the attainment of one Bar for the whole of India will not be difficult. It is not necessary for the Provincial Bars to be completely eliminated. Local problems are bound to exist but in respect of questions affecting the profession as a whole there can and should be no objection to a unified Bar for India.

The question of the language of the Courts has been raised since India got its independence. If India is to be one, it is natural to expect it to have one common language. Let that be decided first by the collective will of the people. In doing so, adjustments will have to be made by some for the common benefit of the whole of India. It should be remembered that law is a technical subject and for years we have been thinking of questions of law and arguing cases in English. Our Statute law is largely based on English Statutes. It will therefore not be easy to find at once appropriate words and expressions in the selected new language Moreover, if such words can be found or are newly coined, it will be necessary.

for the lawyers to be fully familiar with them. It is also necessary for the people at large to be familiar with such terms and expressions. You will appreciate that in making contracts or in making wills, which are, if I may say, events of common occurrence in the lives of people, if they are not familiar with the terminology of the new language, they are likely to make mistakes through no fault of theirs, but because they are expressing their thoughts in a new language. My suggestion therefore has been that the beginning should be made in the schools to teach the new language. The work of translating the Acts of the Legislatures can be undertaken at the same time. Most probably doing all this will require a decade or two. A change-over to a new language cannot be worked overnight. The problem is not acute and if we want to avoid inconveniences this is not a sphere in which impatience can pay. Once the progress is made in the manner suggested by me, the change-over to the new language will come without effort, inconvenience or harm to anyone.

The Province of Madras has produced erudite lawyers with good practice at the Bar and the profession has given to the High Court several great Judges. A clear exposition of the principles of law is often noticed in the reports of their judgments. Judges of this Court have been selected to adorn the Judicial Committee of the Privy Council and have been appointed to the Federal Court also. Your contribution in the field of politics is also not negligible. The Province is known for its simplicity of life and habits. I cannot however help observing that for some time past the Province is in the turmoil of party politics which prevents a stable outlook and steady progress. The controversy of dividing the Province into linguistic Provinces is well known. Provincial jealousies, with a view to acquire power and positions of advantage in the administration of the country, have become more visible. I am sure the right thinking lawyers of the Province do not encourage such petty-mindedness. You have many Associations of lawyers in the different parts of the Province. There is a general movement to create one Bar in India and to eliminate distinctions between lawyers of different Provinces. The record of the last two World Wars shows that it is difficult for small entities to exist independently of others. The world is moving for its safety and peace towards unification and not towards decentralization or division. Madras has been administered for a long time past as one Province. I have no quarrel with persons, who desire to develop different areas according to their culture, art and education. I must point out that the creation of small Provinces means more governors, ministers and public servants responsible for the life, safety and betterment of the people. That causes a considerable strain on the resources of the Province. I am not concerned with politics. I am interested only in the proper administration of law and justice and it seems that the creation of small Provinces, which can afford only small remuneration to their officers, makes it difficult for those Provinces to get efficient judges. If you want to keep the fountain of justice unpolluted, you want judges who are independent and whose integrity cannot be questioned. You will appreciate that to persuade learned lawyers with good practice, to give up the profession and accept judgeships, the emoluments of the office should be at least such that they provide the ordinary daily needs of a man of that social position, without seeking any favours. It is from that point of view only that I have drawn your attention to this topic.

When the new Constitution is about to be framed the question of the independence of the Judiciary is bound to be in the forefront of all right thinking intelligent men. The government of a country has three limbs—the Legislative, the Executive and the Judiciary. Each has its own activities and functions separately carved out. Each however forms an integral part of the whole. There is no fundamental conflict between each of them. However, as each of them has to perform its functions in their respective defined spheres, the independence of one from the other is natural to be expected. The Legislature frames the laws. The Executive government has to carry on the government according to the laws prescribed by the Legislature. In the event of a question arising whether certain

acts of the Executive are within the law or not, an independent authority has to decide it. That is the function of the Judiciary. It is natural to expect that the authority, which has to decide the dispute, cannot and should not be under the control of, or be in a condition to be influenced by, either of the disputing parties. If that authority is under the control of either, a natural apprehension about the impartiality of the decision must arise. While a judicial officer does not object to his functions and duties being defined by a Statute, he naturally wishes that in performing his duties and in arriving at his decisions, it should not even be possible to suggest that any decision is likely to be influenced, because the judicial authority has to depend for its existence or emoluments on the wishes and pleasure of the executive authority. The independence of India means the independence of its people and that independence can remain only if law is respected not only by the individual citizens but by the State which means the citizens in the collective sense. It has been the experience of all to whom adult franchise has been given that the Judiciary should be independent. Without the independence of the Judiciary (*i.e.*, those who administer the law) it is thus recognised that the liberty of the citizen cannot be adequately safeguarded. If you want the Judiciary to remain independent of the executive control, it is obvious that no executive officer should be in a position to grant or refuse favours to the judicial officer. Let the judicial officers' qualifications, the terms of their service and their position on retirement be clearly defined so that they are not liable to be increased or decreased at the will of the executive. It should be the effort of persons, who are responsible for framing the new Constitution, as also of persons who are interested in preserving the liberty of the citizen, that this independence is unshakably and unequivocally provided for in the Constitution Act. This is a question of principle and not a question of persons for the time being in charge of the executive government. Along with you all I hope and trust that the oft-repeated public statements of politicians of all classes to keep the Judiciary independent and free from the executive will not remain in words only but will be translated into action in the Constitution Act. I hope and trust that the Provincial governments in their zeal for economy will not treat the Subordinate Judiciary, who have suffered because they have not been turbulent and vocal in their demands but have stood on their dignity and independence, as poor relations or the proverbial step-children.

I think it is not out of place to draw the attention of this and other Lawyers' Associations to one class of work, which is very useful but to which adequate attention has not been given. The laws in India have been modelled on the English Statutes. Even the laws of procedure are largely adopted from the procedure of English Courts. When, as a result of experience or some judgments, defects in drafting or deficiencies in the structure of the legislation are found, the British Parliament has amended their laws. In India, however, for many years, nay decades, amendments are not made in the Acts of the Legislature. This is very unsatisfactory and, if sufficient care is not taken, likely to lead to an incorrect decision of cases. It is, I think, the proper function of a Lawyers' Association to notice such amendments, when made in England, and if, on proper consideration, found necessary or suitable to the people of India, to draw the attention of the authorities to do the needful. Sometimes you will get a poor response. Do not be discouraged. Repeat your views till you succeed. You can canvass public opinion and the authorities are bound to listen. By doing this you keep your knowledge of law fresh, avoid the dryness of the study of the statute law and reap benefit from the experience of others. Moreover this will make you familiar with the objects and reasons for enacting the different sections and for their amendments, all of which is very useful to understand and appreciate the true meaning of the legislation.

With the merger of numerous States in the Union of India and with the abolition of the Zemindari system in several Provinces, the practice of the lawyers will be affected for some time. To secure a lucrative practice is not however the *summum bonum* of a lawyer's life. It is not the primary purpose of his career. The world

is torn with jealousies and hatred. Claims to superiority over one's neighbours are put forth on grounds of race, culture and even colour. In such a world I know of no greater duty upon lawyers than a re-statement of man's individual worth and the fight to maintain the liberty and safety of a citizen's person and property. The equipment which the study of law has given you casts a duty on you to help the country in maintaining its independence and to allow a true democracy to work and develop. The object of the Legislature is to keep the people free, safe and independent. It is the duty of the lawyers to help in administering the law for the betterment of the society. For it is true of our profession, as it is of life itself, that the greatest boon is to have known the best and to have known it for the best. It would be an interesting enquiry to discover how many patient judges, how many inspired legislators, how many careful framers of free constitutions and how many defenders of liberties this profession has given to the various democratic states of the world and to India. In the intricacies of modern life, law tends to be the hand maiden of big business. Without law no business can thrive. Without law no society can survive. But at its best, advocacy with its honesty, its eloquence and its courage has always been on the side of the weak and the just. For law is primarily concerned with the drama of life and its essential humanity. The whole drama of man's progress from savagery to civilization is the drama of the law. His progress is the progress of law. Our quest too is the quest for truth. And if we have been concerned with the making and the enforcement of law, no group of men have done so much to see that law is not the will of the dictator but the organised will and conscience of the people, that it is not a fixed, rigid and unalterable thing but that it grows and changes—sometimes too slowly—but that it is adapted to the conscience, will and the needs of mankind. One instance of this is the legislation during the last decade, relating to the rights of women. The other is the labour legislation made in the Provinces to bring about a greater levelling of different classes of people and a more even distribution of the wealth of the country. A great Judge once stated "Because law is the will of the community it is the law or morality. The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race; the practice of it, in spite of familiar jests, tends to make good citizens and good men."

A mental survey of India, as it is, will show you that people at the top in charge of the administration and welfare of the country starting with the Governor-General including several Ministers are lawyers. They have been installed in their positions not because they have passed the law examinations but because of their training as true lawyers. We may be equally proud of the fact that the architect of the Nation, Mahatma Gandhi, was a lawyer. Starting as a small lawyer without privilege and without influence, he became the prophet of the eternal truths. A lover and seeker of peace he became one of the greatest warriors of freedom and independence. Despised sometimes for his colour and creed, and jailed often for his insistence to live according to his opinions, he stood forth in a world torn by hate as an apostle of charity and an evangelist of the unity of mankind. Ladies and Gentlemen, that is the ideal lawyer.

Law and Justice, since ancient times, have been acknowledged to be emblems of God, their voice the harmony of the world. All things in heaven and earth do them homage. The humble and poor are living under their care and the greatest and richest are not exempted from their power. Remembering all these things, cannot we lawyers be grateful for the brotherhood that springs from this common enthusiasm and the benediction of a common heritage? For no studies are more worth the pursuit than those which lead to the understanding of these eternal principles of freedom, to a determination to be for ever watchful against the destruction and to an undying hope that some day the dream of universal peace will become a reality to bless all people of the world. Till then what better endeavour, what more divine enthusiasm can there be than the maintenance and strengthening of the defences of our civilization, Law and Liberty, which are all acknowledged to be the proper work and duties of a lawyer. To-day and for many years, the

leadership of the free world is yours, not for the asking or the taking but for the giving. It is the gift of men not because of the things you have, but for the things you are. It is a gift which you cannot renounce for it is given not in patronage but in gratitude and hope by millions of simple, decent, home-loving, God-fearing, peace-seeking men and women who cherish their freedom. As a plain citizen of the land to which all of us belong, I speak with gratitude and the hope that springs therefrom because you have pledged your lives and your honour to the cause of the freedom of Independent India. I know that we have our faults, yet if the large majority of us have these ideas and ambitions in our forefront to guide our lives and to mould our character, the lawyers as a class will be considered to have done their duty by the other citizens and played their useful and patriotic part in stabilizing the independence which India has won after a great struggle. The lawyers' profession and life is thus not necessarily a lust for money or power. Equally necessary and part of such life are the sense of duty and humility in doing the work. Let not lawyers work for the assertion of rights alone. Let them approach the career in the spirit of performing duty. Let not the shortcomings or faults of some others mislead you or make you deviate from your path of duty and desire to maintain the freedom and liberty of the people. Recall the words of Rudyard Kipling :

> Grant us the strength that cannot seek
>
> In thought or deed to harm the weak
>
> That under Thee we may possess
>
> Man's strength to comfort man's distress.

The position and ambition of a lawyer can hardly be more appropriately summarised. Our country wants and must have men of honesty and integrity. Our country wants and must have men who are able and desirous of doing their duty, fearless of consequences in their struggle to maintain and stabilise the independence of India. I am confident that this Association composed of members, whose ideas of a true lawyer are of the type mentioned by me, will fulfil its duties towards the people of India. Let us all try and follow the motto of the family of His Excellency the Governor : " MANUSHYA YATNA, ISHWAR KRAPA."

Ladies and Gentlemen, I thank you for your hearty and warm welcome.